

2017R00153

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 20-744 (RBK)  
v. : HON. ROBERT KUGLER  
JOHN W. BARRY JR. :

**UNITED STATES' MOTION FOR THE ADMISSION OF BUSINESS RECORDS**

The United States moves for a determination, under Federal Rule of Evidence 104, that records described in the certifications attached as Exhibit A are certified records of regularly conducted business activity, and, therefore, are admissible under Federal Rules of Evidence 803(6) and 902(11) without the need for an authenticating witness to testify at trial.

**DISCUSSION**

Records of regularly conducted business activity are admissible under the exception to the hearsay rule set forth in Federal Rule of Evidence 803(6). When accompanied by a certification of a records custodian, such records are self-authenticating, pursuant to Federal Rule of Evidence 902(11), and do not require the testimony of a records custodian to admit them into evidence. This rule applies in criminal cases without offending the Sixth Amendment's confrontation clause. *United States v. Denton*, 944 F.3d 170, 184 (4th Cir. 2019); *United States v. Yeley-Davis*, 632 F.3d 673, 680 (10th Cir. 2011); *United States v. Ellis*, 460 F.3d 920, 927 (7th Cir. 2006). Rule 902(11) requires that the proponent of the evidence give the opposing party "reasonable written notice of the intent to offer the record." This motion serves as such notice.

Attached as Exhibit A are certifications that comply with Federal Rules of Evidence

803(6) and 902(11) and support the admissibility of records from the following sources without testimony from a records custodian: (1) TD Bank, (2) BB&T, (3) JP Morgan Chase, and (4) Wells Fargo. Based on these certifications, the documents described in the certifications should be admitted at trial without the United States having to call a witness to authenticate and introduce them.

### **CONCLUSION**

For the foregoing reasons, the Court should admit at trial business records certified by TD Bank, BB&T, JP Morgan Chase, and Wells Fargo without a witness needing to testify.

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June, 2021 I filed this motion via ECF, thereby affecting service on counsel for defendant John W. Barry Jr.

By: /s/ Sean M. Green

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